

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 379 OF 2005

Natha @ Saheba Rama Pawar
C-17347, presented lodged
at B Yard, BC YCP, Pune .. Appellant
V/s
The State of Maharashtra .. Respondents.

Mr. Arfain sait, Advocate for the appellant.

Mrs. M.M. Deshmukh, A.P.P for the State.

CORAM : J.H. BHATIA, J.

DATE : 15TH JANUARY, 2007.

ORAL JUDGMENT

. The appellant, who is original accused No.12, in Special Case No. 2/2002 under MCOCA was convicted by the learned Special Judge, Pune, for the offence punishable under sections 3(1)(ii) and 3 (4) of Maharashtra Control of Organised Crimes Act, 1999 (hereafter referred to as the "MCOCA") along with three others and was sentenced to undergo R.I. for five years and to pay fine of Rs. five lacs on each count. The appellant, who is in jail since 22nd December, 2001, had preferred this appeal, through jail with a very limited prayer. He did not challenge his conviction nor he challenged the substantive sentence of imprisonment and

fine. He merely requested that the sentence of imprisonment in default to pay fine may be reduced to one month or three months, so that he may be released from jail, as he has already undergone substantial substantive sentence of imprisonment due to his custody from the date of arrest till the decision of the trial Court. The case of the appellant is that he as accused No.12, and 4 other accused were put to trial for different offences under MCOCA with the allegations that they, along with the absconding accused, had committed various offences jointly or singly, as members of organised crime syndicate or on behalf of the syndicate by use of violence, intimidation or by other unlawful means like offences against body as well as property. It is alleged that on 27/9/2000 at about 9 to 10 p.m. in all five persons committed robbery at the country liquor shop of Ganpat Dattatraya Narote of Walchand Nagar and forcibly took away cash from the counter of the liquor shop and also snatched wrist watch from one Dnyanadeo Narote by assaulting Dnyandeo (PW2), as well as one Gunwant Patil (PW3). After the incident, API Ashok Pawar (PW7) of Walchand Nagar Police Station along with others rushed to the scene of offence and on getting information that culprits were hiding themselves

in sugar-cane crop, encircled them and nabbed the accused Nos. 1 to 4. About that incident FIR was lodged by PW 2 Dnyandeo Narote and Crime No. 113 of 2000 under section 395 of Indian Penal Code was registered. During the investigation, it was revealed that some accused persons had committed Crime No.5 of 2000 under section 394 r/w 511 of IPC. On 28/12/2000 on a report of one Ramdas Pawar, Crime No. 153/2000 under Section 457, 458, 459 of IPC came to be registered against Bhaskar and his companions. Similarly, several other offences were noticed and after investigation with permission of the competent authority, provisions of MCOCA were applied and Crime No.113/2000 came to be registered as Crime No. 25/2001 under MCOCA at Walchandnagar Police Station. After investigation, charge-sheet was filed, charges were framed, and the accused were put to trial. Accused pleaded not guilty. On behalf of the prosecution in all 15 witnesses were examined and after hearing both the parties the learned Special Judge, convicted four accused persons, including present appellant for the offences punishable under section 3(1) (ii) and 3(4) of MCOCA and sentenced as stated earlier.

2. The accused was admittedly taken in custody on 22/12/2001. The impugned Judgment and order of conviction was passed on 31st December, 2003. Thus, he was in jail as under trial prisoner for 2 years and 10 days. After his conviction also, he continued to be in jail. It appears that he had not applied for bail. He preferred this appeal in the year 2005 through jail for a limited prayer, as stated earlier. Somehow, this appeal is also pending for quit a long time. As per information received from Aurangabad Central Jail, where the accused is confined, he has already completed substantive sentence of imprisonment and if he does not pay fine, he would also complete the further imprisonment in default to pay fine by 5th October, 2007 and on that day he would be entitled to be released from jail.

3. Mr. Arfan Sait, the learned Counsel for the appellant, vehemently pleaded for leniency in respect of the sentence of imprisonment in default to pay fine. According to him, the applicant is a poor labourer and therefore, it is not possible for him to pay fine amount. According to him, he has no criminal antecedents but somehow, he was implicated in this case,

and has been convicted. He contends that if in default sentence is reduced to 3 months on each count, he may come out of jail, otherwise, he would be punished only for his poverty. It is true that one has to undergo sentence for the commission of crime and for execution of the sentence, mere financial condition of the convict cannot be taken into consideration.

4. Even though the accused has not challenged the conviction. I have gone through the evidence led by the prosecution, as well as the impugned Judgment only to consider the sentence in default to pay fine. The prosecution led oral evidence mainly about two offences, which were registered as Crime No. 113 and 153 of 2000 at Walchand Nagar. The present appellant does not appears to be connected with any of those offences. In para 12 of the impugned Judgment, he is shown to be connected with Crime No.55/1996 and 193/1996 under sections 395 and 396 of IPC registered at Usmanabad City Police Station. Both these cases were shown pending against him. It is material to note that none of the remaining accused Nos. 1 to 4, who were put to trial were connected with Crime No.55/1996. Only accused No.1 Bhaskar Shinde was shown to be connected with crime No.

193/1996 along with present appellant. No oral evidence was led about the offence pertaining to Crime No. 55/1996 and 193/1996. Thus, no substantial evidence was led against the present appellant about commission of any crime. It is further material to note that both the offences registered against him were of 1996. No offence was registered against him after MCOCA had come in force in 1999. Taking into consideration all these circumstances, and the fact that present applicant is continuously in jail for last more than 5 years, I find that it is a fit case, where sentence in default of payment of fine should be substantially reduced, so that he may not be required to remain in jail any more for offence for which the prosecution has practically not led any evidence.

5. For the aforesaid reasons, appeal is allowed.

. The sentence of R.I. in default to pay fine stands modified as follows:-

. The appellant/accused No.2 Natha @ Saheba Rama Pawar shall undergo further R.I. for three months only in default to pay fine on each count under Section 3

(1)(ii) and 3(4) of the M.C.O.C. Act and to that extent the order of sentence passed by the Special Judge, under M.C.O.C.Act (Pune), in Special Case No. 2/2002 stands modified.

(J.H. BHATIA, J.)